IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANGELO KARAKASIS d/b/a YOUR FAMILY CHIROPRACTIC CENTER,	)	
Plaintiff,	)	
vs.	)	CIVIL ACTION No. 00-1234
AETNA U.S. HEALTHCARE,	)	
Defendant.	)	

MEMORANDUM

Padova, J. May , 2000

This matter arises on Defendant's Motion to Dismiss, filed March 13, 2000. Plaintiff filed a Response to Defendant's Motion on March 31, 2000. Plaintiff requests that the Court remand this action to the Delaware County Court of Common Pleas. The parties filed further briefing on these issues, and the matter is now ripe for decision. For the reasons that follow, the Court will deny Defendant's Motion to Dismiss, and remand this case for lack of jurisdiction.

I. BACKGROUND

Plaintiff originally filed this complaint in the Delaware County Court of Common Pleas on August 27, 1999 ("First Complaint"). Defendant removed the First Complaint to this Court, and filed a motion to dismiss. On November 10, 1999, the Court granted Defendant's motion to dismiss as uncontested pursuant to Local Rule 7.1(c).

On January 31, 2000, Plaintiff refiled the complaint ("Second Complaint") in the Court of Common Pleas of Delaware County. On March 8, 2000, Defendant removed the action to this Court, and filed the instant motion to dismiss. The Second Complaint is identical in all respects to the First Complaint.

In his Second Complaint, Plaintiff alleges that on or about August 13, 1997, Anthoula Voulgaris, an insured of Defendant, sought chiropractic treatment from Plaintiff. Plaintiff further alleges that Defendant represented to Plaintiff that Voulgaris was insured by Defendant, and covered for chiropractic treatments. Plaintiff treated Voulgaris for approximately six weeks. On September 29, 1997, Defendant notified Plaintiff that Voulgaris was not covered for chiropractic care, and refused payment to Plaintiff. In his Second Complaint, Plaintiff brings three claims against Defendant: (1) breach of contract; (2) justifiable reliance; and (3) unjust enrichment.

II. STANDARD

The purpose of a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) is to test the legal sufficiency of the complaint. Winterberg v. CNA Ins. Co., 868 F. Supp. 713, 718 (E.D. Pa. 1994), aff'd, 72 F.3d 318 (3d Cir. 1995). A claim may be dismissed under Rule 12(b)(6) only if it appears beyond doubt that the plaintiff could prove no set of facts in support of the claim that would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). In considering such a motion, a Court must accept all of the facts alleged in the complaint as true and must liberally construe the complaint in the light most favorable to the plaintiff. ALA, Inc. v. CCAIR, Inc., 29 F.3d 855, 859 (3d Cir. 1994); Robb v. City of Philadelphia, 733 F.2d 286, 290 (3d Cir. 1984); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). The question is not whether the plaintiff will ultimately prevail, but whether he is entitled to present evidence in support of his claims. Scheuer v. Rhodes, 416 U.S. at 236.

III. DISCUSSION

Defendant moves to dismiss on two grounds. First, Defendant argues that the dismissal of the First Complaint operated as an adjudication on the merits, and bars the instant action. Alternatively, Defendant submits that Plaintiff's claims are preempted under section 514 of the

Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1144(a). In response, Plaintiff argues that the dismissal of the First Complaint did not operate as an adjudication on the merits because this Court lacked jurisdiction over the First Complaint. Similarly, Plaintiff argues that the Court lacks jurisdiction over the Second Complaint, and moves to remand.

A cause of action is removable from state court to federal court when the federal court has "original jurisdiction" because one or more of the plaintiff's claims "arise under" federal law. 28 U.S.C. §1441(a) and 1332. Under the well-pleaded complaint rule, a claim "arises under" federal law only when a federal issue appears on the face of the plaintiff's complaint. Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 63 (1987). A corollary of the well-pleaded complaint rule, however, is the doctrine of "complete preemption." Id. at 63-64. Under the doctrine of complete preemption, "Congress may so completely pre-empt a particular area that any civil complaint raising this select group of claims is necessarily federal in character." Id. In Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58 (1987), the Supreme Court extended the doctrine of complete preemption to state actions falling within the scope of ERISA's civil enforcement provision, section 502(a). See also In re U.S. Healthcare, Inc., 193 F.3d 151, 160 (3d Cir. 1999).

A. DEFENSIVE PREEMPTION

Section 514 of ERISA provides that ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by the statute. 29 U.S.C. §1144(a). "Defensive preemption, [however], provides only an affirmative defense to certain state-law claims." Butero v. Royal Macabees Life Insurance Co., 174 F.3d 1207, 1212 (11th Cir. 1999). As an affirmative defense, Section 514 preemption does not provide a basis for federal subject matter jurisdiction, and removal to federal court. Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 64 (1987)("ERISA preemption, without more, does not convert a state law claim into an action arising

under federal law."); see also Dukes v. U.S. Healthcare, Inc., 57 F.3d 350, 355 (3d Cir. 1995). As the Fifth Circuit recently explained in Giles v. Nylcare Health Plans, Inc., 172 F.3d 332, 337 (5th Cir. 1999):

> The presence of conflict [also known as defensive] preemption does not establish federal question jurisdiction. Rather than transmogrifying a state cause of action into a federal one --as occurs with complete preemption--conflict preemption serves as a defense to a state action.

Hence, when a complaint only raises state causes of action that the defendant argues are subject to defensive preemption, the Court must remand for lack of subject matter jurisdiction.

B. COMPLETE PREEMPTION

The "complete preemption" doctrine, on the other hand, is not a preemption doctrine, but a federal jurisdictional doctrine. In re U.S. Healthcare, Inc., 193 F.3d 151, 160 (3d Cir. 1999). Complete preemption "converts an ordinary state law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule." Metropolitan Life Ins. Co., 481 U.S. at 65. This exception derives from the reasoning that "Congress may so completely preempt a particular area that any civil complaint raising this select group of claims is necessarily federal in character." Metropolitan Life Ins. Co., 481 U.S. at 63-64.

In the context of ERISA, the Supreme Court has held that complete preemption exists only when a plaintiff's state law claims fall within the scope of the civil enforcement provisions contained in section 502(a) of ERISA, 29 U.S.C. §1132(a). Metropolitan Life Ins. Co., 481 U.S. at 67; see also In re Healthcare, Inc., 193 F.3d at 160. Accordingly, "state law claims which fall outside the scope of §502, even if preempted by §514(a), are still governed by the well-pleaded complaint rule and, therefore, are not removable under the complete-preemption principles established in Metropolitan Life." Dukes v. U.S. Healthcare, Inc., 57 F.3d 350, 355 (3d Cir. 1995).

C. APPLICATION TO THIS ACTION

Accordingly, the Court must analyze whether Plaintiff's claims "fall within the scope" of §502(a). Section 502 of ERISA provides that a civil action may only be brought under ERISA by a plan "participant," "beneficiary," or "fiduciary." 29 U.S.C. §1132(a). The Third Circuit Court of Appeals has instructed the lower courts that §1132(a) must be read narrowly and literally. Northeast Dept. ILGWU v. Teamsters Local Union No. 229, 764 F.2d 147, 153 (3d Cir. 1988). It is clear that Plaintiff does not qualify as a "participant" under the ERISA statutory definition. 29 U.S.C. §1002(2)(b)(7). Nor does Plaintiff qualify as a fiduciary. The question before the Court, then, is whether Plaintiff, a health care provider, is a beneficiary of Voulgaris' health benefits plan.

Section 1002(2)(B)(8) defines the term beneficiary as

> a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder.

29 U.S.C. §1002(2)(B)(8). The Second Complaint does not allege that Voulgaris assigned his rights under the health plan to Plaintiff at any time. Cf. Northwestern Institute of Psychiatry v. Traveler's Ins. Co., Civ. A. No. 92-1520, 1992 WL 236257, at *2 (E.D. Pa. Sept. 3, 1992). Nor does the Second Complaint allege that health care providers receive benefits available to plan participants directly from Defendant. Cf. Albert Einstein Medical Center v. National Benefit Fund for Hosp. and Health Care Employees, 740 F.Supp. 343, 349 n. 2 (E.D. Pa. 1989). Finally, the Court notes that neither party has submitted a copy of the plan as part of the record.

Based on the foregoing, the Court cannot conclude that Plaintiff is eligible to bring a claim under §502 of ERISA as a beneficiary. Thus, although Plaintiff's Complaint may "relate to" an

ERISA plan thereby triggering defensive preemption[1], the Court can find no basis for holding that Plaintiff's cause of action asserts a claim falling within the scope of section 502. The Court, therefore, lacks subject matter jurisdiction, and will remand this case to the Delaware County Court of Common Pleas.

[1] "When the doctrine of complete preemption does not apply, but the plaintiff's state claim is arguably preempted under §514(a), the district court, being without removal jurisdiction, cannot resolve the dispute regarding preemption. It lacks the power to do anything other than remand to the state court where the preemption issue can be addressed and resolved." Dukes v. U.S. Healthcare, Inc., 57 F.3d 350, 355 (3d Cir. 1995).

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ORDER

AND NOW, this day of May, 2000, upon consideration of Defendant's Motion to Dismiss, Plaintiff's Request to Remand, and the briefing thereon, **IT IS HEREBY ORDERED** that

1. Defendant's Motion to Dismiss (docket #2) is **DENIED**.

2. Plaintiff's Request to Remand (docket #4) is **GRANTED**.

3. This action is **REMANDED** to the Court of Common Pleas of Delaware County.

4. The Clerk shall mark this case **CLOSED** for statistical purposes.

BY THE COURT:

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John R. Padova